



Agenda Date: 5/16/06

Agenda Item: 5 c

**STATE OF NEW JERSEY**

**Board of Public Utilities**

**Two Gateway Center**

**Newark, NJ 07102**

**www.bpu.state.nj.us**

**WATER**

IN THE MATTER OF THE JOINT PETITION OF )	ORDER APPROVING
SBW&S CORPORATION AND ROXITICUS )	STIPULATION
WATER COMPANY FOR APPROVAL OF THE	
SALE AND TRANSFER OF ALL ISSUED AND )	
OUTSTANDING STOCK IN ROXITICUS, FOR A )	
CHANGE IN OWNERSHIP AND CONTROL AND	
TO RENEW AND EXTEND AN EXISTING LOAN	DOCKET NO. WM05080755

(SERVICE LIST ATTACHED)

BY THE BOARD:

On August 30, 2005, SBW&S Corporation (SBW&S) and Roxiticus Water Company (Roxiticus) filed a joint petition (Joint Petitioners) with the Board of Public Utilities (Board) in accordance with N.J.S.A. 48:3-10, N.J.S.A. 48:2-51.1, and N.J.S.A. 48:3-9 for approval of the sale and transfer of all issued and outstanding capital stock in Roxiticus to SBW&S, for a change in the ownership and control of Roxiticus, and for authorization to renew and extend an existing loan.<sup>1</sup>

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<sup>1</sup> By letters dated March 28, 2006 and April 24, 2006, Joint Petitioners amended their petition as follows: (a) the wording appearing in parenthesis stating "(against a total loan balance of \$150,000)" in paragraph 8(c) of the petition should be deleted in its entirety; (b) notwithstanding anything to the contrary set forth in the petition, it is SBW&S' understanding that the loan balance on the existing loan from Roxiticus to David Jackson does not exceed and has not exceeded the \$116,265 limit authorized by the Board in its Order dated August 30, 2001, in Docket No. WF01030195; (c) to the extent any costs have been incurred by David Jackson on behalf of Roxiticus the cumulative amount of which exceed \$116,265 (excess costs), any such excess costs will be reimbursed to David Jackson by SBW&S at closing, consistent with the terms and provisions of the contract; and (d) Joint Petitioners request nunc pro tunc approval of the loan extension referred to in Count Two of the petition which loan became due on December 31, 2005.

## PROCEDURAL HISTORY

Roxiticus is a public utility corporation of the State of New Jersey supplying water service to approximately 100 customers in a portion of Mendham Township, Morris County, New Jersey. All of Roxiticus' 100 shares of issued and outstanding capital stock is owned by David Jackson (Jackson).

SBW&S is a corporation of the State of New Jersey and is owned by G.P.M. Associates, Inc. (GPM). SBW&S has no employees and is managed and operated by the officers and directors of GPM whose officers and directors are identical to those for SBW&S and those proposed for Roxiticus, post closing. The officers and directors of SBW&S are David Monie, Roger Hall and Lawrence Zucker.

SBW&S is also the owner of all of the issued and outstanding capital stock in SB Water Company (SB Water) and SB Sewer Company (SB Sewer), public water and sewer companies, respectively, franchised to serve a portion of Colts Neck Township, Monmouth County, New Jersey. SB Water and SB Sewer each have about 280 customers.

GPM, engineering and management consulting firm, specializing in providing engineering, consulting and management services to the water utility industry is owned by David Monie, Roger Hall and Larry Zucker. Misters Monie, Hall and Zucker are all directors of GPM and serve in the following management positions: President (David Monie), Vice President and Secretary (Roger Hall), and Vice President, Treasurer (Lawrence Zucker).

By Order dated August 30, 2001, in Docket No. WF01030195, the Board approved Roxiticus' request to issue a five-year promissory note maturing on December 31, 2005, in the amount of up to \$116,265, to its stockholder, David Jackson (Loan Order). Interest at a rate of eight and one-half (8.5%) percent was payable quarterly and is limited to the amount of Roxiticus's positive utility operating income with any interest earned above that amount waived.<sup>2</sup> In the instant matter, Joint Petitioners (Roxiticus and SBW&S) are seeking Board approval nunc pro tunc to renew and extend, for 5 years, the terms and conditions of the promissory note between Roxiticus and David Jackson that was approved in the Loan Order.

On July 8, 2005, SBW&S entered into a Stock Purchase Agreement (Agreement) with David Jackson, the sole stockholder in Roxiticus, to acquire his shares in Roxiticus for the following consideration:

- a. Cash Consideration - A cash payment (adjusted book equity) to be paid, at closing, by SBW&S to David Jackson in an amount equal to the difference between \$150,000 (purchase price) and the balance due on the Existing Loan (Loan Order approved a \$116,265 promissory note between David Jackson and Roxiticus).<sup>3</sup> The maximum cash payment to David Jackson by SBW&S would be \$33,735.

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<sup>2</sup> This was an interest payable only loan with the principal amount of \$116,265 to be paid at the end of the loan period, i.e. December 31, 2005.

<sup>3</sup> The April 24, 2006, letter amendment to the petition states that it is SBW&S' understanding that the loan balance on the existing loan from Roxiticus to David Jackson does not and has not

- b. Additional Consideration - Subject to Board approval of an extension of the Existing Loan:
1. SBW&S will cause all interest and principal that becomes due and payable on the Existing Loan, after closing on the Agreement, to be paid by Roxiticus to David Jackson.
  2. Neither Roxiticus, nor SBW&S, will be liable, after closing on the Agreement, for any interest that accrued and was unpaid prior to closing.
  3. Any interest due on the Existing Loan after closing on the Agreement which exceeds the positive utility operating income of Roxiticus shall be paid by SBW&S.

The Joint Petitioners filed their petition seeking approval of the transaction under N.J.S.A. 48:2-51.1, which provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliate or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached or any other action taken, in violation of this act shall be void.

Roxiticus will continue to exist and operate as a public utility subsequent to the purchase of its stock by SBW&S from David Jackson, the sole shareholder.

Joint Petitioner is also seeking Board's approval pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10 for authorization for the sale or transfer capital stock.

### STIPULATION

Since the filing of the joint petition, Board Staff and the Ratepayer Advocate (RPA) served extensive discovery requests upon the Joint Petitioner. Subsequently, the Joint Petitioners, Board Staff and the RPA (collectively, the "Parties") engaged in settlement discussions and entered into a Stipulation.

With regard to the information evaluation required under N.J.S.A. 48:2-51.1 and based upon the joint petition, discovery, and conferences among the Parties, the Parties stipulated to the following:

- A. Competition. The consummation of the proposed transaction will have no impact on competition, because, as a separate corporate entity in its existing franchise territory subject to continuing Board jurisdiction and regulation, Roxiticus has no competitors (Settlement paragraph 10A).

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exceeded the \$116,265 limit authorized by the Board in its Order dated August 30, 2001, in Docket No. WF01030195 and, to the extent that any costs incurred by David Jackson, on behalf of Roxiticus, the cumulative amount of which exceed \$116,265, that such excess amount will be reimbursed to David Jackson by SBW&S at closing, consistent with the terms and provisions of the contract.

- B. Customer rates. The consummation of the proposed transaction will not affect the rates to be charged the customers of Roxiticus because the Roxiticus tariff, pursuant to which service is rendered to the public, will not change as result of this transaction (Settlement paragraph 10B).
- C. Employees. The consummation of the proposed transaction will have no impact on the employees of Roxiticus, because Roxiticus has no salary employees and instead outsources for necessary services (such as meter reading and accounting with GPM performing rate consulting and minor engineering services) (Settlement paragraph 10C).
- D. Provision of Safe and Adequate Service.
- (i) The consummation of this transaction will benefit Roxiticus's customers because SBW&S already owns and operates two other regulated public utilities in New Jersey and has the necessary managerial experience and technical expertise, in conjunction with its affiliate, GPM Associates Inc. (GPM), to operate Roxiticus in a safe, adequate and proper manner, in full compliance with applicable regulatory requirements.
  - (ii) Consummation of this transaction will provide Roxiticus with more professional and experienced management, because GPM specializes in managing and providing consulting services to water utilities. David Monie, GPM's President, who will become the President of Roxiticus post-closing, is a licensed professional engineer and water system operator in New Jersey with over 35 years of experience in the water utility industry and will serve as the licensed operator of Roxiticus. GPM's knowledge and familiarity with the regulatory framework within which Roxiticus operates, and the rules and regulations to which it is subject, will promote a high level of compliance by Roxiticus with applicable regulatory requirements.<sup>4</sup>
  - (iii) Upon consummation of this transaction, Roxiticus will become part of a larger organization, with two other regulated public utilities, SB Water Company and SB Sewer Company, as affiliates. This will provide it with a stronger financial base and an enhanced capacity to obtain financing for needed capital improvements from external sources (Settlement paragraph 10D).

In connection with N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, which requires information as to the reasons for the stock transfer, anticipated changes in the Board of Directors, Officers, Management, and Company policies, a review of the petition and discovery responses in this matter established that:

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<sup>4</sup> In May 2004, Roxiticus was issued a NJDEP Notice of Violation for not monitoring/reporting water quality for bulk water purchases pursuant to the New Jersey Safe Drinking Water Act and in June 2005, it was issued a NJDEP Notice of Violation for failure to employ a licensed operator. Roxiticus is now providing the required monitoring and reporting and is no longer in violation of the New Jersey Safe Drinking Water Act and has retained a licensed operator. David Monie, who holds a W-4 water distribution license, will become the licensed operator of Roxiticus post-sale, as well as the President of the company.

- A. The reason for the proposed stock sale is that Jackson is retiring and no longer wishes to own and operate a public water utility (Settlement paragraph 11A).
- B. At closing of the stock purchase, the existing officers and directors of Roxiticus<sup>5</sup> will tender their resignations and will be replaced by the following individuals who also serve as Board members, and officers of, SBW&S and will hold the same positions in Roxiticus as they currently hold in SBW&S: David Monie, President; Roger Hall, Vice-President and Secretary; Larry Zucker, Vice-President and Treasurer (Settlement paragraph 11B).
- C. David Monie, Roger Hall and Larry Zucker also serve as officers and directors of GPM, an engineering and management consulting firm specializing in providing engineering, consulting and management services to the water utility industry. As indicated in the Petition, GPM has served as consulting engineer to Roxiticus for many years and, after consummation of this transaction, will assume responsibility for the management and operation of Roxiticus (Settlement paragraph 11C).
- D. Because GPM does not intend to charge Roxiticus an amount reaching or exceeding \$25,000 for any management or related services it may provide, the parties agree that Board approval pursuant to N.J.S.A. 48:3-7.1 is not required. If any management, advisory service, construction or engineering contract is entered between Roxiticus and GPM for which Board approval is required pursuant to N.J.S.A. 48:3-7.1, Roxiticus and GPM will promptly petition the Board for the necessary approval (Settlement paragraph 11D).
- E. The consummation of the proposed transaction will cause no change in the balance sheet or financial condition of Roxiticus, except that if the outstanding balance of the existing loan, at closing, exceeds the limit previously authorized by the Board in its Order dated August 30, 2001 (which is not anticipated), then SBW&S will, if necessary, make a capital contribution to Roxiticus to enable it to reduce the loan balance to the authorized limit, i.e., \$116,265. In such event, the equity component of Roxiticus's capitalization will increase, and Roxiticus will be brought into full compliance with the Board's Loan Order (Settlement paragraph 11E).
- F. The consummation of this transaction will also facilitate resolution of the NJDEP compliance issues referred to in paragraph 6 of the Stipulation. The record to this proceeding shows that all required monitoring and reporting is now being performed. In addition, David Monie, who holds the requisite water distribution license and who will become Roxiticus's president after closing, has served as the licensed operator since July 2005, and will continue to serve in that capacity after closing, thereby resolving this remaining compliance issue. No fines were levied against Roxiticus with respect to the NJDEP compliance issues (Settlement paragraph 11F).

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<sup>5</sup> The existing officers and directors of Roxiticus are David Jackson (President and Director), Suzanne Jackson (Secretary and Director) and J. D'Archangelo (Director).

## DISCUSSIONS AND FINDINGS

The Board, having considered the record in this matter HEREBY FINDS that:

The proposed transaction is in accordance with law and is not contrary to the public interest.

2. The proposed conditions set forth in the Stipulation entered into by the Parties are reasonable and appropriate and in conjunction with existing statutes provide the Board with sufficient means to properly regulate the operations of Roxiticus.
3. Based upon the record in this proceeding and subject to the conditions set forth in this Order, the statutory criteria set forth in N.J.S.A. 48:2-51.1 are satisfied and there will be no adverse impact on any of the criteria set forth in N.J.S.A. 48:2-51.1 and, furthermore, the Board finds that positive benefits to customers and the State, as more fully described in the Stipulation and set forth herein will result from the approval of the transfer of control.
4. The proposed transaction is expected to be beneficial to the customers of Roxiticus and further the public interest as SBW&S owns and operates two other public utilities of comparable size and has the necessary managerial experience and technical expertise to operate Roxiticus in a safe and efficient manner, in compliance with applicable regulatory requirements.
5. In its Order dated August 30, 2001, approving the Existing Loan, the Board noted that "in substance, as a result of the subject promissory note, capital financing for necessary plant construction was made available to Petitioner that, in all probability, would not have been available through conventional external sources." In light of Roxiticus' small size, earnings history, and prevailing economic conditions, the terms of the existing loan which Petitioners seek to renew are reasonable and a renewal and extension of the Existing Loan is appropriate and in accordance with law. By letter dated April 24, 2006, Joint Petitioners amended their petition to request Board approval nunc pro tunc of the loan extension which loan became due on December 31, 2005, and for which Joint Petitioners are requesting a 5-year extension.
6. Roxiticus' tariff will not change as the result of the purchase of its stock by SBW&S.
7. Pursuant to N.J.S.A. 48:3-9, the statutory criteria governing the authorization to renew and extend the existing loan are satisfied.

After careful review of the record of this proceeding including the joint petition, discovery responses and the Stipulation of the Parties, the Board HEREBY ADOPTS the Stipulation attached herein, as its own, incorporating by reference the terms and conditions as if fully set forth at length herein. Accordingly, the Board HEREBY APPROVES the Stipulation attached hereto as its own subject to the following conditions:

- a. Subject to the execution, where appropriate, of acceptable confidentiality determinations and/or agreements, the Board and the Ratepayer Advocate shall be provided access to the books and records of SBW&S and its parent or any of its affiliates or subsidiaries for the purposes of reviewing the proper allocation of costs to water operations and to the extent the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting Roxiticus' operations.
- b. Nothing in this Stipulation shall be construed so as to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et. seq. Roxiticus shall agree to maintain its books and records in accordance with the Board approved Uniform System of Accounts or as otherwise prescribed by the Board.
- c. SWB&S and Roxiticus shall inform the Board of the date of closing of the stock purchase transaction within ten days of such closing and shall file with the Board final journal entries within 45 days of closing reflecting the actuals, at the time of closing, of transaction costs, stock purchase costs and related items, equity and/or investment amounts and related items, existing loan amount and existing loan related costs, and Uniform System of Accounts account number(s), where applicable.
- d. Within 45 days of closing, SBW&S shall provide to the Board and to the Ratepayer Advocate an exhibit showing the details and explanation of all direct transactions costs relating to the stock transaction and the existing loan transaction for SBW&S and Roxiticus, separately.
- e. SBW&S or Roxiticus shall not recover from utility customers, those transaction costs, which are directly related to this stock purchase transaction.
- f. Any rate treatment of transaction costs not related to the stock purchase shall be made in the context of a base rate proceeding.
- g. Subject to the execution, where appropriate, of acceptance of confidentiality determinations and/or agreements, copies of the tax returns of Roxiticus shall be made available by SBW&S to the extent the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting Roxiticus' operations. This provision shall not impair the rights of any of the parties in any other proceeding.
- h. Roxiticus shall keep its books and records at a location within New Jersey.

Roxiticus Water Company customers shall continue to pay for water service at rates pursuant to Roxiticus' existing Board approved tariffs.

Nothing in this Order shall be construed as limiting the jurisdiction vested in the Board under title 48 or as altering the requirements found therein, including but not limited to the requirements in N.J.S.A. 48:2-51.1 or N.J.S.A. 48:2-16.

- k. This Order shall not effect or in any way limit the exercise of the authority of this Board or of the State, in any future petition, with respect to rates, franchises, cost of service, franchises, services, financing, accounting, capitalization, depreciation or any other matter affecting Joint Petitioners.

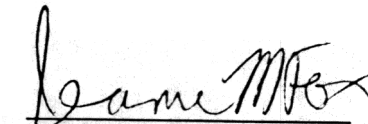
This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Joint Petitioners.



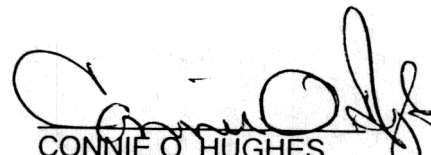
- m. Consummation of the transactions approved herein must take place no later than 90 days from the date of service of this Order, unless otherwise extended by the Board.

DATED: 5/17/06

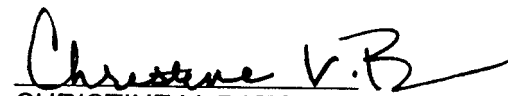
BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT


  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

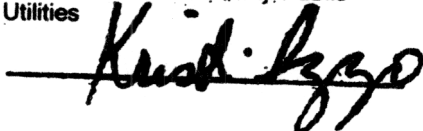
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE JOINT PETITION OF SBW&S CORPORATION AND  
ROXITICUS WATER COMPANY FOR APPROVAL OF THE SALE AND TRANSFER OF  
ALL ISSUED AND OUTSTANDING STOCK IN ROXITICUS, FOR A CHANGE IN  
OWNERSHIP AND CONTROL AND TO RENEW AND EXTEND AN EXISTING LOAN  
DOCKET NO. WM05080755

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April 24, 2006

Kristi Izzo, Secretary  
BOARD OF PUBLIC UTILITIES  
Two Gateway Center  
Newark, New Jersey 07102

In the Matter of the Joint Petition of SBW&S Corp. and  
Roxiticus Water Company for Approval of the Sale and Transfer  
of All Issued and Outstanding Stock in Roxiticus, for a Change  
in Ownership and Control and to Renew and Extend an Existing  
Loan

BPU Docket No. WM05080755

Dear Ms. Izzo:

This will amend and supplement our letter dated March 28, 2006  
requesting nunc pro tunc approval in the above matter.

We wish to revise that letter, clarify the transaction and formally  
amend the Petition in the following respects:

(1) In paragraph 8(c) on page 3 of the Petition, the wording  
appearing in parentheses stating, ("against a total loan balance of  
\$150,000") should be deleted in its entirety;

(2) Notwithstanding anything to the contrary set forth in the  
Petition, it is the understanding of SBW&S Corp., that the loan balance  
on the existing loan from Roxiticus Water Company to David Jackson  
("Jackson") does not exceed, and has not exceeded, the \$116,265.00 limit  
authorized by the Board in its Order dated August 30, 2001 in Docket No.  
WF01030195;

(3) To the extent any costs have been incurred by Jackson on behalf  
of Roxiticus Water Company the cumulative amount of which exceed  
\$116,265.00 ("excess costs"), any such excess costs will be reimbursed  
to Jackson by SBW&S Corp. at closing, consistent with the terms and  
provisions of the contract;

(4) Petitioners hereby request nunc pro tunc approval of the loan  
extension referred to in Count Two of the Petition.

We request that the Petition be amended accordingly. Thank you for

your attention to the matter.

Very truly yours,

✓ Douglas R. Kleinfeld

DRK/jt

cc: Susan McClure, Esq.  
Edward J. Trawinski, Esq.  
Jeff Slutzky, DAG  
Dante Mugrace  
David R. Monie

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RECEIVED  
MAIL ROOM  
06/06/06 PM 1:37

March 28, 2006

Kristi Izzo, Secretary  
BOARD OF PUBLIC UTILITIES  
Two Gateway Center  
Newark, New Jersey 07102

Re: In the Matter of the Joint Petition of SBW&S Corp. and  
Roxiticus Water Company for Approval of the Sale and Transfer  
of All Issued and Outstanding Stock in Roxiticus, for a Change  
in Ownership and Control and to Renew and Extend an Existing  
Loan

BPU Docket No. WM05080755

Dear Ms. Izzo:

In connection with the above-captioned matter, we hereby amend the  
Petition to request Board approval nunc pro tunc, of the loan extension  
referred to in Count Two. Thank you for your attention to the matter.

Very truly yours,

  
Douglas R. Kleinfeld

DRK/jt

cc: Susan McClure, Esq.  
Edward J. Trawinski, Esq.  
Jeff Slutzky, DAG  
Dante Mugrace  
David R. Monie

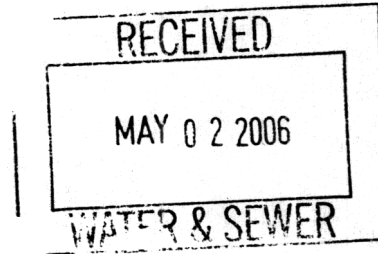
STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

RECEIVED  
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NEW JERSEY UTILITIES

IN THE MATTER OF THE JOINT PETITION OF  
SBW&S CORP AND ROXITICUS WATER  
COMPANY  
FOR APPROVAL OF THE SALE AND  
TRANSFER OF ALL ISSUED AND  
OUTSTANDING CAPITAL STOCK IN  
ROXITICUS, FOR A CHANGE IN OWNERSHIP  
AND CONTROL AND TO RENEW AND  
EXTEND AN EXISTING LOAN

BPU DOCKET NO. WM05080755

STIPULATION



APPEARANCES

Douglas R. Kleinfeld, Esq., Kleinfeld & Kleinfeld, Esqs., Attorneys for Petitioner,  
SBW& S Corp.;

Edward J. Trawinski Esq., Schenk, Price, Smith and King Esqs., Attorneys for Petitioner  
Roxiticus Water Company

Susan McClure, Esq., Assistant Deputy Ratepayer Advocate for Division of Ratepayer  
Advocate, (Seema M. Singh, Esq., Director, Ratepayer Advocate).

Jeff Slutzky, Deputy Attorney General, for the Staff of the Board of Public Utilities  
(Zulima V. Farber, Attorney General of New Jersey).

INTRODUCTION

1. On August 30, 2005, Petitioners SBW&S Corp. (SBW&S) and Roxiticus Water Company (Roxiticus) filed a Joint Petition with the New Jersey Board of Public Utilities (Board), pursuant to N.J.S.A. 48:3-9, N.J.S.A. 48:3-10, N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.10 for a) approval of the sale and transfer of all issued and outstanding capital stock in Roxiticus to SBW&S, b) acquisition of control of Roxiticus, and c) to renew and extend an existing loan.
2. Roxiticus is a public water utility of the State of New Jersey, subject to the jurisdiction of the Board, and is franchised to provide water service in a portion of Mendham Township, Morris County, New Jersey. Roxiticus serves approximately 100 customers.

3. Roxiticus has 100 shares of issued and outstanding common stock all of which is owned by David B. Jackson (Jackson).
4. SBW&S is a corporation of the State of New Jersey and is the owner of all issued and outstanding stock in SB Water Company and SB Sewer Company, public utilities franchised to serve part of Colts Neck Township, Monmouth County, subject to the Board's jurisdiction. SBW&S serves approximately 280 water and sewer customers.
5. On July 8, 2005, SBW&S entered into a Stock Purchase Agreement (Agreement) with Jackson to purchase all the issued and outstanding capital stock in Roxiticus, upon the terms and conditions specified in the Agreement. A copy of the Agreement is annexed to the Petition as Exhibit B and is incorporated herein by reference.
6. The closing of the stock purchase is conditioned on, among other things, Board approval of this transaction, in accordance with paragraph 8 of the Agreement, and resolution of certain outstanding New Jersey Department of Environmental Protection (NJDEP) compliance issues, in accordance with paragraph 9 of the Agreement—namely, a Notice of Violation dated May 21, 2004, alleging a violation of the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and N.J.A.C. 7:10-5.1, for alleged failure to monitor/report water quality for a bulk purchaser Public Community Water System; and a Notice of Violation dated June 9, 2005, alleging a violation of the New Jersey Water Supply & Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., and N.J.A.C. 7:10A-1.10(a), for alleged failure to employ a licensed operator for a Very Small Water System.
7. The stock purchase is also conditioned on the Board authorizing a renewal and extension of a certain loan from Jackson to Roxiticus, in an amount not to exceed \$116,265.00, at an interest rate of 8.5%, maturing on December 31, 2005, on the same terms, for an additional five years, and maturing December 31, 2010 (existing loan). The existing loan was approved by the Board pursuant to an Order dated August 30, 2001, in Docket No. WF01030195. If renewed, the existing loan will continue to limit Roxiticus' interest payment obligation to its positive utility operating income as provided in the original Board order. A copy of the Proposed Promissory Note reflecting the loan terms on renewal is annexed to the Petition as Exhibit C and is incorporated by reference herein.
8. On closing of the sale, all issued and outstanding capital stock in Roxiticus will be transferred to SBW&S, however, Roxiticus will retain its separate corporate existence and continue in business as a public utility subject to the Board's jurisdiction. All property, privileges, franchises and rights held by Roxiticus prior to closing will continue to be held by it after closing.

#### STATUTORY CRITERIA

9. In considering a request for approval of a change in control pursuant to N.J.S.A. 48:2-51.1, it is necessary to "evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public

utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates.”

10. With regard to these four factors, the Verified Petition, discovery and conferences among the parties establish, inter alia:

A. Competition. The consummation of the proposed transaction will have no impact on competition, because, as a separate corporate entity in its existing franchise territory subject to continuing Board jurisdiction and regulation, Roxiticus has no competitors.

B. Customer rates. The consummation of the proposed transaction will not affect the rates to be charged the customers of Roxiticus because the Roxiticus Tariff, pursuant to which service is rendered to the public, will not change as result of this transaction.

C. Employees. The consummation of the proposed transaction will have no impact on the employees of Roxiticus, because Roxiticus has no salary employees and instead outsources for necessary services.

D. Provision of Safe and Adequate Service.

(i) The consummation of this transaction will benefit Roxiticus’s customers because SBW&S already owns and operates two other regulated public utilities in New Jersey and has the necessary managerial experience and technical expertise, in conjunction with its affiliate, GPM Associates Inc. (GPM), to operate Roxiticus in a safe, adequate and proper manner, in full compliance with applicable regulatory requirements.

(ii) Consummation of this transaction will provide Roxiticus with more professional and experienced management, because GPM specializes in managing and providing consulting services to water utilities. David Monie, GPM’s President, who will become the President of Roxiticus post-closing, is a licensed professional engineer and water system operator in New Jersey with over 35 years of experience in the water utility industry and will serve as licensed operator of Roxiticus. GPM’s knowledge and familiarity with the regulatory framework within which Roxiticus operates, and the rules and regulations to which it is subject, will promote a high level of compliance by Roxiticus with applicable regulatory requirements.

(iii) Upon consummation of this transaction, Roxiticus will become part of a larger organization, with two other regulated public utilities, SB Water Company and SB Sewer Company, as affiliates. This will provide it with a stronger financial base and an enhanced capacity to obtain financing for needed capital improvements from external sources. Indeed, SBW&S previously obtained a Board approved loan from CoBank for SB Water and Sewer Companies (BPU Order dated May 28, 1997, Dkt. No. WF97020086) and it is anticipated that additional financing from that source would be available should Roxiticus need funding for necessary capital improvements in the future.



11. In connection with N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, which require information as to the reasons for the stock transfer, anticipated changes in the Board of Directors, Officers, Management, Company policies, etc., a review of the Petition and discovery responses in this matter demonstrates that:
- A. The reason for the proposed stock sale is that Jackson is retiring and no longer wishes to own and operate a public water utility. The stock transfer from Jackson to SBW&S is intended to implement the transaction contemplated by the Agreement;
  - B. At closing of the stock purchase, the existing officers and directors of Roxiticus will tender their resignations and will be replaced by the following individuals who also serve as Board members, and officers of, SBW&S and will hold the same positions in Roxiticus as they currently hold in SBW&S: David Monie, President; Roger Hall, Vice-President and Secretary; Larry Zucker, Vice-President and Treasurer;
  - C. David Monie, Roger Hall and Larry Zucker also serve as officers and directors of GPM, an engineering and management consulting firm specializing in providing engineering, consulting and management services to the water utility industry. As indicated in the Petition, GPM has served as consulting engineer to Roxiticus for many years and, after consummation of this transaction, will assume responsibility for the management and operation of Roxiticus;
  - D. Because GPM does not intend to charge Roxiticus an amount reaching or exceeding \$25,000.00 for any management or related services it may provide, the parties agree that Board approval pursuant to N.J.S.A. 48:3-7.1 is not required. If any management, advisory service, construction or engineering contract is entered between Roxiticus and GPM for which Board approval is required pursuant to N.J.S.A. 48:3-7.1, Roxiticus and GPM will promptly petition the Board for the necessary approval.
  - E. The consummation of the proposed transaction will cause no change in the balance sheet or financial condition of Roxiticus, except that if the outstanding balance of the existing loan, at closing, exceeds the limit previously authorized by the Board in its Order dated August 30, 2001 (which is not anticipated), then SBW&S will, if necessary, make a capital contribution to Roxiticus to enable it to reduce the loan balance to the authorized limit, i.e., \$116,265.00. In such event, the equity component of Roxiticus's capitalization will increase, and Roxiticus will be brought into full compliance with the Board's aforementioned Order;
  - F. The consummation of this transaction will also facilitate resolution of the NJDEP compliance issues referred to in paragraph 6, supra. The record to this proceeding shows that all required monitoring and reporting is now being performed. In addition, David Monie, who holds the requisite water distribution license and who will become Roxiticus's president after closing, has served as the licensed operator since July 2005, and will continue to serve in that capacity after closing, thereby resolving this remaining

compliance issue. No fines were levied against Roxiticus with respect to the NJDEP compliance issues.

12. Petitioners' request for authorization to renew and extend the existing loan is governed by N.J.S.A. 48:3-9, which provides, in pertinent part, that: "No public utility shall, unless it shall have first obtained authority from the board so to do: (a)...extend or renew any bond, note or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument..."

In its order dated August 30, 2001 approving the existing loan, the Board noted: "In substance, as a result of the subject Promissory Note, capital financing for necessary plant construction was made available to Petitioner that, in all probability, would not have been available through conventional external sources."

Because Roxiticus continues to have minimal earnings and its financial condition is essentially the same as it was when the Board approved the existing loan, its ability to obtain external financing, on comparable terms, to refinance the existing loan remains in doubt. In light of its small size, earnings history and prevailing economic conditions, the terms of the existing loan, which Petitioners seek to renew, are reasonable and a renewal and extension of the existing loan is appropriate and in accordance with law.

13. In the course of this matter, Petitioners responded to extensive and detailed discovery requests propounded by Board Staff and Ratepayer Advocate. Roxiticus, SBW&S, the Ratepayer Advocate, and Board Staff also conferred on various occasions to review and negotiate a resolution of this matter.

#### STIPULATION

4. As a result of the review and analysis by the parties of the Petition, the exhibits, and the Petitioners' responses to discovery propounded by Board Staff and the Ratepayer Advocate, and following negotiations concerning the issues and pertinent statutory criteria, the parties stipulate and agree to the following :
- A. Based on the foregoing and subject to the conditions set forth, herein, the parties agree that the statutory criteria set forth in N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 are satisfied, that the proposed stock transfer can be effectuated without any adverse impact on competition, rates or employees or on the provision of safe and adequate utility service at just and reasonable rates, and agree to recommend to the Board that it approve the proposed transaction and enter an Order: (1) approving the sale and transfer of all issued and outstanding capital stock in Roxiticus to SBW&S; (2) authorizing SBW&S to acquire control of Roxiticus; and (3) authorizing Roxiticus to record, on its books and records, the sale and transfer of all its issued and outstanding capital stock to SBW&S.
  - B. In connection with Count 2 of the Petition requesting authorization to renew and extend the existing loan from David B. Jackson to Roxiticus pursuant to N.J.S.A. 48:3-9, the parties acknowledge that the statutory criteria governing the authorization to renew and

extend are satisfied and, accordingly, stipulate and agree to recommend to the Board that the Board authorize and approve the renewal and extension of the existing loan for a additional period of five (5) years, on the same terms and conditions as previously approved by the Board, including a provision that continues to limit Roxiticus's interest payment obligations to its positive operating income.

15. It is agreed that any Order entered by the Board adopting this Stipulation may contain a provision that the authority granted therein shall be null and void if the stock purchase transaction is not closed within 90 days of the date of the Board Order.
16. It is further stipulated and agreed that nothing in this Stipulation shall be construed as directly or indirectly fixing for any purposes whatsoever any value of the tangible or intangible assets now owned or hereinafter to be owned by Petitioners nor in any way limit the exercise of the authority of the Board or of the State of New Jersey in any future proceeding with respect to rates, franchises, services, financing, accounting, capitalization or any other matters affecting Petitioners.

#### GENERAL PROVISIONS

17. This Stipulation applies only to this proceeding and is thus executed by the parties without prejudice to the positions asserted by each in this case and without prejudice to the positions which the parties may choose to assert in future proceedings. The parties further agree that the purpose of this Stipulation is to conclude a matter pending before the Board. This Stipulation is not in any way intended to restrict or bind any of the parties hereto with respect to substantive positions they may choose to assert in any pending or future proceeding in this or any other forum. Therefore, the parties acknowledge that the Stipulation herein has been made exclusively for this proceeding before the Board.
18. In the event of any modification, amendment or alteration of this Stipulation by the Board, the parties individually reserve the right to either deem the Stipulation void in toto (in which case the parties would revert to the status quo prior to the execution of this Stipulation, which in this matter would be a Petition pending before the Board awaiting final disposition) or to consent to the modification(s) in writing.

COUNTERPARTS

This Stipulation may be executed in as many counterparts as there are signatories to this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument consisting of several counterparts.

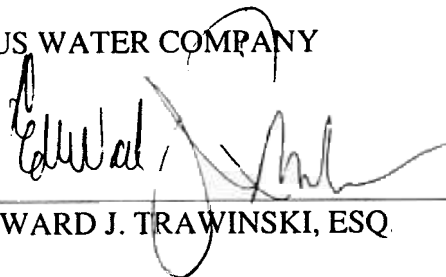
Dated: 3-17-06

SBW&S Corp

By:   
DOUGLAS R. KLEINFELD, ESQ.  
KLEINFELD & KLEINFELD, ESQS.

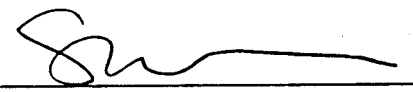
Dated: 3-17-06

ROXITICUS WATER COMPANY

By:   
EDWARD J. TRAWINSKI, ESQ.

Dated: 3/17/06

DIVISION OF THE RATEPAYER ADVOCATE  
SEEMA M. SINGH, ESQ.  
RATEPAYER ADVOCATE

By:   
SUSAN E. McCLURE  
ASSISTANT DEPUTY RATEPAYER  
ADVOCATE

ZULIMA V. FARBER, ATTORNEY GENERAL  
OF NEW JERSEY

ATTORNEY FOR THE STAFF OF THE BOARD  
OF PUBLIC UTILITIES

Dated: 3/17/06

By:   
JEFF SLUTZKY  
DEPUTY ATTORNEY GENERAL